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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 SWORDS TO PLOWSHARES,

Case No.: C01-5459-MJJ

12 v. Plaintiff,

**DEFENDANT ROBERT KEMP'S  
REPLY IN SUPPORT OF MOTION TO  
DISMISS PURSUANT TO F.R.C.P. 12(b)(6)**

13 ROBERT KEMP,

Date: April 23, 2002

14 v. Defendant.

Time: 9:30 a.m.

15 ROBERT KEMP,

Place: Courtroom 11

16 v. Plaintiff,

Judge: Hon. Martin J. Jenkins

17 Complaint Filed: December 28, 2001

18 Amend. Comp. Filed: January 31, 2002

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2                   **REPLY IN SUPPORT OF MOTION TO DISMISS**

3

4                   **LANDLORD DID NOT PROPERLY PLEAD COMPLIANCE WITH THE**  

5                   **APPLICABLE FEDERAL REGULATIONS**

6                   In its opposition, Landlord asserts that by merely stating in its Amended Complaint that it  

7 provided Mr. Kemp notice “in compliance with state and federal law,” that it sufficiently plead the  

8 *facts* required to evict Mr. Kemp. (Opposition 3:1-4; quoting First Amend. Comp. 5:1-3.) This is  

9 incorrect: Landlord’s allegation is merely a legal conclusion and does not constitute *facts* sufficient to  

survive a motion to dismiss:

10                  Conclusory allegations or *legal conclusions masquerading as*  

11 *factual conclusions will not suffice to prevent a motion to dismiss.*  

12 While facts must be accepted as alleged, this does not automatically  

extend to bald assertions, subjective characterizations, or legal  

conclusions.

13

14 (*General Motors Corp. v. The New A.C. Chevrolet, Inc.* (3d. Cir. 2001) 263 F.3d 296, 333,  

15 emphasis added.)

16                  Landlord’s assertions that its service complied with the applicable Federal and California law  

17 amounts to a mere legal conclusion; thus Landlord has not adequately set forth a claim upon which  

18 relief may be granted.

19 Dated: April 9, 2002

20

21                  THELEN REID & PRIEST LLP  

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23                           CHRISTOPHER BAKER  

24                           PATRICK M. RYAN  

25                           CHAD DEVEAUX

26

27                  By \_\_\_\_\_ /s/ Chad DeVeaux  

28                           CHAD DEVEAUX  

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ROBERT KEMP